IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRP.No. 1879 of 1999(F)

RCA.64/1997 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.61/1994 of RENT CONTROL COURT, KOZHIKODE-I

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REVN. PETITIONER/APPELLANT/RESPONDENT:

M.JANARDHANAN NAIK, S/O MADHAVA NAIK,
MADHAVA NAIK JEWELLERY, PALAYAM BAZAR,
ROOM NO.10/1002, CALICUT (DIED).

LRs are impleaded as additional petitioners:

2. VRINDA J.NAIK, W/O LATE M.JANARDHANAN NAIK, NO.19/413, AISHWARYA, CHALAPPURAM, CALICUT - 1.

3. VIDHYA, D/O LATE DO. DO. DO.

4. MADHAV NAIK.J., S/O LATE DO. DO. DO.

5. JYOTHI, D/O LATE DO. DO. DO.

6. ANIL NAIK.J., S/O LATE DO. DO. DO.

(*Impleaded as per order dt. 17.6.05 on IA 1593/05)*

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS/RESPONDENTS/PETITIONERS:

1. MRS.K.LEELAVATHY BAI, D/O GANAPATHY NAIK, KACHERI AMSOM & DESOM, KOZHIKODE TALUK.

2. MRS.K.AHALIA BAI, D/O RAMAKRISHNA NAIK,
   DO. DO.

3. MRS.S.INDIRA BAI, D/O SREENIVASA PRABHU,
   DO. DO.

BY ADV. SRI.T.KRISHNANUNNI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/06/2007 ALONG WITH CRP NO.149 OF 2000, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.3936/1999 IN C.R.P.NO.1879/1999

DISMISSED

14.6.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.Nos.1879/99 & 149/2000

COMMON ORDER

Balachandran, J.

The tenant in R.C.P.No.61/94 on the file of the Rent Control Court, Kozhikode was the petitioner in C.R.P.No.1879/99. Pending revision, he passed away and his legal representatives are impleaded as additional petitioners 2 to 6 in the revision. The landlords in the RCP are the respondents herein. In C.R.P.No.149/00, filed by the landlords, the additional respondents are the legal representatives of the original tenant. The parties are being referred to with reference to their status in the Rent Control Court.

2. The landlords filed R.C.P.No.61/94 against the original tenant for eviction on grounds falling under Sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The

petition for eviction was resisted by the tenant disputing the grounds alleged and contending further that the claim under Section 11(3) of the Act is barred by the first proviso to Section 11(3) of the Act and claiming protection under the second proviso to Section 11(3) of the Act as also under Section 11(17) of the Act. The Rent Control Court allowed the claim under Sections 11(2)(b) and 11(4)(iii) of the Act, but dismissed the claim under Section 11(3) of the Act repelling, however, the claim for protection under Section 11(17) of the Act.

3. Against the order allowing eviction under Sections 11(2)(b) and 11(4)(iii) of the Act, the tenant filed R.C.A.No.64/97 and against the order disallowing eviction under Section 11(3) of the Act, the landlords filed R.C.A.No.77/97. By a common judgment, the appellate authority confirmed the order of eviction passed under Section 11(2)(b) of the Act and rejection of the claim under Section

11(17) of the Act and reversed the order of eviction passed under Section 11(4)(iii) of the Act, but allowed eviction under Section 11(3) of the Act. Hence, these revisions respectively by the tenant and the landlords.

4. Though in C.R.P.No.1879/99 the tenants have taken the grounds challenging the order of eviction under Section 11(2)(b) of the Act and rejection of the claim under Section 11(17) of the Act, those are not urged before us and rightly too, in view of the concurrent findings of the authorities below. Hence, the order of eviction granted under section 11(3) of the Act by the appellate authority is assailed in C.R.P.No.1879/99 and the order of the appellate authority reversing eviction granted under Section 11(4)(iii) of the Act is impugned in C.R.P.No.149/00.

5. The counter petitioner/tenant Sri.Janardanan Naik was conducting jewellery business in the scheduled building under the name and style

'M/s.Madhava Naik', in continuation of the business in jewellery, conducted by his late father Madhava Naik. Eviction of the tenant from the scheduled building is claimed by the petitioners for the bona fide need for the third petitioner's younger sons Manjunath and Gireesh to conduct jewellery business. It is in evidence that they are the adult children of the third petitioner, who have completed their studies and are experienced in conduct of jewellery business by assisting their father Varadaraja Bhat in conduct of jewellery along with his brothers under the name and style 'Bhat Brothers'. The need of the third petitioner to provide independent business for her sons, who have also given evidence as PWs 2 and 3, cannot, by any stretch of imagination, be said to be lacking in bona fides. The evidence furnished by the tenant himself shows that the husband of the third petitioner, his brothers as also her two elder sons are engaged in various businesses.

6. The contention of the tenant is that behind the jewellery 'Bhat Brothers' there are two vacant rooms, though not facing the main road and that, therefore, without assigning special reasons, eviction of the scheduled building cannot be had and that if the need is genuine, sons of the third petitioner could have started business in those rooms. It is worthy to note that the said vacant rooms belong to 'Bhat Brothers', owned jointly by the husband of the third petitioner and his brothers and the husband of the third petitioner has tendered evidence as PW1 that those rooms are, however, not vacant and that the rooms are used for keeping records of their firm 'Bhat Brothers' and for storing jewellery boxes. When the third petitioner claims vacant possession of the scheduled building bona fide for starting business in jewellery for her two younger sons, the contention of the tenant that the third petitioner's husband is a partner of 'Bhat

Brothers' and that the said jewellery is having two rooms behind it and that can be put to use for the business of the younger sons of the third petitioner, cannot be accepted. Even assuming that the said rooms are not genuinely put to use for keeping business records and jewellery boxes, the husband of the third petitioner alone will not be able to provide those rooms to their dependent sons without the junction of his brothers. 'Bhat Brothers' having rooms in their possession, even if vacant, conceding for argument sake, is no reason for the tenant to resist eviction under Section 11 (3) of the Act, either challenging the bona fides of the third petitioner or invoking the first proviso to Section 11(3) of the Act.

7. The counter petitioner/tenant has not been able to establish on evidence that he is depending mainly for his livelihood on the income derived from the business in jewellery conducted in the scheduled building. The evidence of RW1 further

shows that he had not made any enquiry to have an alternate building for shifting his business. Hence, he is not entitled to protection under the second proviso to Section 11(3) of the Act. In the circumstances, the challenge made by the tenant in C.R.P.No.1879/99 against the order allowing eviction under Section 11(3) of the Act by the appellate authority is not tenable and this revision deserves to be dismissed.

8. The petitioners/landlords have challenged the order of the appellate authority, reversing the order of eviction passed by the Rent Controller under Section 11(4)(iii) of the Act, accepting the tenant's contention that Janardana Jewellery run in the shop room, let out by PW4, is the business run by the son of the tenant and it is not that the tenant has come into possession of that room as well and that the business is being conducted by him therein as well. The case of the landlords under Section 11(4)(iii) of the Act stands

established on the evidence of PW4 and RW1 themselves.

9. RW1 has admitted in cross-examination that on coming into force of the Gold Control Act, jewellery business was stopped and business in electrical goods was conducted by him from 1964 to 1985. He further stated that at this time, his son's education was completed and himself and his son are together conducting jewellery business in the scheduled building ever thereafter till the day of his tendering evidence. He has also stated that the business in electrical goods was stopped while conducting that business in a room in Kammathi Lane, which belonged to one Ajith Naik. He denied, when questioned that the room in Kammathi Lane is still in his possession and stated that it was vacated in 1987 and asserted further that Janardana Jewellery is now being run in the said room and he does not know who is running that business and however that it is not being run by anyone related

to him. Thus, his specific case is that himself and his son Anil Naik are together conducting jewellery in the scheduled shop room and some one not related to him is running Janardana Jewellery in the room in Kammathi Lane, vacated by him in 1987. All the same, PW4, the owner of the building in Kammathi Lane, has given evidence that the room, wherein Janardana Jewellery is being run, was being let out to RW1 Janardanan Naik and later, its rent began to be paid by Anil Naik, the son of the tenant Janardanan Naik and that Anil Naik is now conducting Janardana Jewellery therein. The evidence of PW4 is not assailed on that aspect and the only question that was put to PW4 in cross-examination is as to whether Anil Naik was not entering into a fresh tenancy and is conducting business by himself. The present stand of the tenant has to be appreciated in the light of his assertions as RW1 to the effect that the person conducting Janardana Jewellery is not having any

relation with him and that his son Anil Naik is conducting business with him in the jewellery run in the scheduled building. In view of the above inconsistent and false stand taken by the tenant, he cannot be heard to contend that his son Anil Naik is conducting Janardana Jewellery independently and that he has not come into possession of that building under PW4. It is a case, where, RW1 admittedly came into possession of the room under PW4 and is conducting Janardana Jewellery, whether the licence be in his name or in his son's name and has created documents later with a view to screen the real fact beneath the veil that he is conducting Janardana Jewellery as well along with his son Anil Naik, who is also assisting him in his jewellery business in the scheduled building. Hence, eviction ordered by the Rent Control Court under Section 11(4)(iii) of the Act and reversed by the appellate authority deserves to be restored allowing C.R.P.No.149/00.

10. Finally, it is urged by the learned counsel for the petitioner/tenant in C.R.P.No. 1879/99 that the tenant be granted reasonable time to vacate and surrender possession of the scheduled building to the respondents/landlords. The request is reasonable and deserves to be considered favourably.

In the result, we allow C.R.P.No.149/00 and dismiss C.R.P.No.1879/99. However, we grant the petitioner/tenant in C.R.P.No.1879/99 time of three months to surrender vacant possession of the scheduled building to the respondents/landlords on following conditions:

i. that he shall clear off all arrears in rents by making deposit of the entire rents in arrears before the execution court positively within one month from today;

ii. that he shall file an affidavit before the execution court reporting deposit of all the rents in arrears; undertaking that he would pay the

future monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the respondents and undertaking unconditionally that he would surrender vacant possession of the scheduled building to the respondents/landlords positively on or before 14.9.2007 and

iii. that in case of failure to comply with the above conditions, the petitioner shall be liable to be evicted immediately on the expiry of the said one month in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

14th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.Nos.1879/1999 & 149/2000

ORDER

14th June, 2007